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C O N F I D E N T I A L SECTION 01 OF 03 NAIROBI 005180

SIPDIS

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SUBJECT: KENYA: 2005 ANNUAL TERRORISM REPORT

REF: SECSTATE 193439

Classified By: Michael J. Fitzpatrick, reasons 1.4 (b,d)

1. (U) This is post's submission for the 2005 Annual Terrorism Report. The first section updates the 2004 Patterns of Global Terrorism section on Kenya. The second section provides supplemental information.

Proposed Text for Patterns of Global Terrorism Report

2. (SBU) Kenya remains an active partner in the war on terrorism and continues to provide assistance targeting terrorist groups operating within Kenya. The government established the National Counter Terrorism Center in January 2004 as well as a National Security Advisory Committee to oversee its operations. However, in 2005, Kenya registered little to no progress towards the overall strengthening of its capabilities to combat terrorism, prosecute terror suspects, or respond to emergency situations. In 2005, the GOK disbanded the U.S.-supported Joint Terrorism Task Force (JTTF), set up in 2004 to improve police and prosecutors, ability to cooperate on CT issues. The government did not engage in a national discussion to sensitize the public to terrorism issues, and it has not yet finalized a national counter terrorism strategy. In April 2003, Kenya published a draft "Suppression of Terrorism" bill, only to withdraw it due to harsh criticism from human rights groups and Kenyan Muslim communities. The GOK wrote a new draft in 2005 but did not officially publish the document or submit it to parliament. In a similar fashion, Kenya has drafted, but not yet submitted to Parliament, the anti-money laundering and CT finance legislation needed to bring the country into compliance with relevant UN resolutions.

3. (SBU) Kenya and the United States continue to share information on suspected terrorists, including those associated with or supportive of al-Qaida. The Kenyan government has taken the initiative in arresting terrorist suspects and disrupting terrorist operations. In November 2005, three transit passengers were arrested at Jomo Kenyatta International Airport for wearing shoes with electronic switches, four men were arrested in October 2005 for allegedly funding terror activities, and one man was arrested in December in Northeastern province for possession of a rocket launcher and RPGs with the alleged intent of smuggling them to Mombasa. The seven terror suspects -- arrested in November 2003 on charges related to the Kikambala hotel bombing and attempted shoot-down of an Israeli airplane in November 2002, the 1998 attack on the U.S. Embassy in Nairobi, and a 2003 plot to attack the new U.S. Embassy -- were acquitted in June 2005. To date, nobody has been successfully prosecuted in relation to these terrorist acts. Kenya continues to be an active participant in the Terrorist Interdiction Program (TIP/PISCES), and in 2004 and 2005 made security improvements at airports and hotels, particularly in Mombasa. The government's ineffective response to the explosion at Wilson airport in October, 2004 however, indicates the need for improved security as well as a mechanism to coordinate government CT efforts.

4. (SBU) Kenya has ratified all 12 international counterterrorism conventions and protocols but has yet to incorporate many of the requirements into national law or a comprehensive counterterrorism strategy. Kenya does not have a comprehensive counterterrorism law, as required by UNSCR 1373.

Supplementary Information

5. (SBU) The GOK promised the Embassy it would provide an integrated, inter-ministerial national security strategy by March 2004. A draft was prepared, but it was not discussed at inter-ministerial level or at Parliament, and it is unclear if it was ever finalized. The Kenyan Department of Defense (KDOD) drafted a national defense strategy & White Paper that stresses the need for a comprehensive, joint-service/interagency approach to coastal and border security to counter terrorism, but it must be put in context of an overall national security strategy. Since 2004, the Kenyan Navy has participated in 10 iterations of combined

Maritime Operations and Training along the coast of Kenya with US Navy elements. This helped train the Kenyan Navy on coastal security operations. The USG will give the Kenyan Navy six coastal security boats by March 2006, permitting them to conduct MAROPS on their own boats. These are funded under the Coastal Security component of the East Africa Counter Terrorism Initiative (EACTI). In addition, a company from the Kenya Army 20th Para Battalion was trained in 2005 as a pre-emptive, cross border strike force company under U.S. Foreign Military Financing.

16. (SBU) The Kenyan Government continued to improve aviation security in 2005 through the Kenya Airport Authority (KAA) and the Kenya Civil Aviation Authority (KCAA). FAA and TSA trained managers and inspectors to better oversee and maintain security procedures and planning. However, consistent enforcement of security procedures and planning remains a challenge. Under the Safe Skies program, FAA is helping Kenya, Uganda and Tanzania update and harmonize their safety regulations to create a regional Civil Aviation Safety structure and a regional Civil Aviation Security Structure. However, future funding for Safe Skies in Kenya is in jeopardy in FY 2006 and beyond because of U.S. legal restriction on assistance to governments which are parties to the Rome Statute establishing the International Criminal Court but which have not signed Article 98 non-surrender agreements with the U.S. The World Bank is also moving forward on projects to improve access controls, perimeter fencing and the terminal building structure. Kenya's civil aviation officials also want to improve pilot registrations, flight plan recording, and terminal security for the country's general aviation sector.

17. (SBU) 2005 has not been a strong year for Kenyan CT efforts from the consular section's perspective. Numerous cases continue to come to consular's attention of Kenyans, previously denied visas, who returned with new passports in new identities in an effort to circumvent the name-check system. Fortunately, the number of such cases has decreased significantly in the last three months. While these cases appeared to be limited to desperate visa applicants, the ease with which they could obtain new identities and passports was alarming and caused concern about who else could do so. The Kenyans blamed the problem on lack of resources, an inadequate late-birth registration procedure, and the influx of Somalis across porous borders. A major source of the problem is as likely official corruption.

18. (SBU) The Government of Kenya has increased its usage of the TIP/PISCES system to a national average of 93% in the period covered by this report. Three airports currently operate the system: Nairobi's Jomo Kenyatta International Airport (JKIA), Eldoret and Moi International Airport in Mombasa. The fourth software installation was damaged during the October 18 explosion at Nairobi's Wilson Airport and is currently offline. It is due to come back online in early 2006. Although the buildup to present-day usage was slow in coming, the system has yielded impressive results thus far. The stop-list has resulted in several suspect turnovers, to include a Korean national suspected of human trafficking and various individuals wanted on narcotics trafficking charges. The stop-list has been equally helpful in ongoing bilateral CT efforts. DHS trained 200 more immigration officers in 2005.

19. (SBU) Kenya lacks counterterrorism legislation, and the current laws make it difficult to prosecute terror suspects. For example, the Evidence Act of 2002 says that any confessions not made before a magistrate are inadmissible. Because of this law, the concrete evidence against the seven terror suspects on trial was ruled inadmissible by the lower courts because it resulted indirectly from information given by an illegal confession. The government passed a Miscellaneous Bill in 2005, which amended the Evidence Act. The new law states a confession can be made in front of a judge, magistrate or senior police officer. The GOK redrafted the Suppression of Terrorism Bill in 2005 after a two-year hiatus, following the failure of the initial draft in 2003. However, the government did not table the new bill in Parliament in 2005.

110. (C) Currently, there is little or no coordination among police, prosecutors, and other relevant government ministries who deal with terrorism issues. This was evident immediately after last October's explosion at Wilson airport. It was unclear who was in charge of the response and investigation. The police, government officials, and intelligence services offered conflicting stories about the explosion. RSO, through DS's Anti-Terrorism Assistance training program, continues to focus on increasing the Kenyan Government's capacity to respond to and investigate and prosecute suspected terrorist acts.

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